11.

Pff in Error Submits on brief filed at No 1211-

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~950~~ 1206 220 6

WILLIAM A. BEVANS, DAVID S. FRAILEY, ROBERT C. BATES, WILLIAM M. LAWRENCE, JOSEPH H. EGNER, AND EDWIN M'GUIRE, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED DECEMBER 7, 1868.

SUPREME COURT OF THE UNITED STATES

No. 333.

WILLIAM A. BEVANS, DAVID S. FRAILEY, ROBERT C. BATES, WILLIAM M. LAWRENCE, JOSEPH H. EGNER AND EDWIN McGUIRE, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the Circuit Court of the United States for the eastern district of Arkansas, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the Circuit Court before you, or some of you, between the United States and William A. Bevens, David S. Frailey, Robert C. Bates, Wm. M. Lawrence, Joseph H. Egner & Edwin McGuire, a manifest error hath happened to the great damage of the said Wm. B. Bevans, David S. Fraily, Robert C. Bates, Wm. M. Lawrence, Joseph H. Egner and Edwin McGuire, as is said, and as appears by their complaint, we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the Supreme Court of the United States at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices afore said, on the first Monday of December next; that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and custom of the United States ought to be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, this first (1st) day of May, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third year.

[SEAL.] CHAS. P. REDMOND,
Clerk of the Circuit Court of the United States of America for the Eastern District of Arkansas.

Allowed by—

SAM. F. MILLER, *Judge.*

2 The execution of this writ appears by the schedule hereto annexed.

Oct. 26, 1868.

CHAS. P. REDMOND, *Clerk.*

I acknowledge due and legal service of the citation under this writ of error, and waive the necessity of any formal citation. May 1st, 1868.

JOHN WHYTOCK,
Dist. Att'y, U. S., Eastern District of Arkansas.

Endorsed: U. S. v. Bevans et al. Filed May 1, 1868. Chas. P. Redmond, clerk.

3 Be it remembered that on the 27th day of September, A. D. 1868, came into the clerk's office of the District Court of the United States for eastern district of Arkansas, Orville Jennings, esq., district attorney, and on behalf of the United States filed his declaration, which is in the words and figures following, to wit:

In the District Court of the United States of America for the eastern district of Arkansas in the eighth circuit, to the April term thereof, A. D. 1867.

EASTERN DISTRICT OF ARKANSES, *ss*:

The United States of America, plaintiffs in this suit, by Orville Jannings, their attorney for the said eastern district of Arkansas, complains of William A. Bevens, David S. Fraley, Robert C. Bates, William M. Lawrence, Joseph H. Egner and William A. Bevens, as administrator of the estate of William W. Lewis, deceased, and Edwin Mc Guire, citizens of the eastern district of Arkansas, aforesaid, defendants in this suit, of a plea that the said defendants render unto the said plaintiffs the sum of fifty thousand dollars, lawful
4 money of the United States of America, which the said defendants owe to the said plaintiffs, and from them unjustly detain, debt and bond.

For that whereas the said defendants, William A. Bevens, David S. Fraley, Robert C. Bates, William A. Lawrence, Joseph H. Egner, and William W. Lewis in his lifetime, and Edwin R. McGuire, heretofore, to wit, on the tenth day of February, in the year of our Lord one thousand eight hundred and sixty, at, to wit, the eastern district of Arkansas aforesaid, and within the jurisdiction of this court, by their certain bond or writing obligatory, bearing date the day and year last aforesaid, sealed with the seals of the said defendants, William A. Bevens, David S. Fraley, Robert C. Bates, William M. Lawrence, Joseph H. Egner and Edwin R. McGuire, and with the seal of the said William W. Lewis in his lifetime, and signed by the said defendants, William A. Bevens, David S. Fraley, Robert C. Bates, William M. Lawrence, Joseph H. Egner, and Edwin B. Mc Guire, and by the said William W. Lewis, in his lifetime, a duly certified copy of which said bond or writing obligatory, the
5 said plaintiffs now here bring into court, and show to the said court. the said defendant, William A. Bevens, as principal, and the said defendants, David S. Fraley, Robert C. Bates, William M. Lawrence, Joseph H. Egner and Edwin R. McGuire, and the said William W. Lewis, since deceased, as sureties, became held and firmly bound unto the said plaintiffs in the sum of fifty thousand dollars, ($50.000 00,) for the payment whereof to the said plaintiffs, the said defendants last aforesaid, together with said William W. Lewis in his lifetime, bound themselves, their heirs, executors and administrators, jointly and severally, firmly by these presents.

And the said plaintiffs further say, that the said bond or writing obligatory was and is subject to a certain condition thereunder written, to the following effect, that is to say, that the above-

bounden principal, (the said William A. Bevens meaning,) was, pursuant to law, appointed by the President of the United States receiver of public moneys for the district of lands subject to sale at Batesville, in the State of Arkansas aforesaid, for the term of four years from the seventeenth day of January, 1860, (or otherwise according to law, &c.,) by commission bearing date the eighteenth
6 day of January, A. D. 1860; and that if he, the said William A. Bevens, should have truly and faithfully executed and discharged, and should continue truly and faithfully to execute and discharge all the duties of the said obligation should be void and of none effect, otherwise it should abide and remain in full force and virtue, (and be enforced forthwith by due process of law,) by the said bond or writing obligatory, and the condition thereunder written, reference had said certified copy will more fully appear.

And the said plaintiffs aver, that the final balance due on said William A. Bevans' fractional second quarter ending the 30th day of April, A. D. 1861, as such receiver of public moneys for the district of lands subject to sale at Batesville, in the State of Arkansas aforesaid, on said 30th day of April, A. D. 1861, which came to his hands as such receiver as aforesaid, belonging to said plaintiffs, amounts, as has been ascertained, to the sum of nineteen thousand seven hundred and thirty-seven dollars and twenty-six cents, ($19,737 26,) which said balance of nineteen thousand seven hundred and thirty-seven dollars and twenty-six cents, the said plaintiffs further aver is due and wholly unpaid, and that the
7 said defendant, William A. Bevens. as such receiver as aforesaid and the other said defendants, his sureties, together with the said William W. Lewis in his lifetime, and the said defendant William A. Bevens, as the administrator of the estate of the said William W. Lewis, deceased, since his said decease have failed and neglected to pay to the plaintiffs, or to any person for them, the said sum of money, so due as aforesaid, from said defendant William A. Bevens, as such receiver as aforesaid, or any part thereof.

And the said plaintiffs further aver, as breaches of the condition of the said bond or writing obligatory, that the said defendant William A. Bevens as such receiver as aforesaid, from the seventeenth day of January, A. D. 1860, to the thirtieth day of April, A. D. 1861, had received on behalf of the United States the sum of nineteen thousand seven hundred and thirty-seven dollars and twenty-six cents ($19,737 26,) which sum remained in his hands on the 30th day of April, A. D. 1861; and that he failed to pay over the same to the United States, as he was bound to do by law and the duties of his office.

8 And the said plaintiffs further aver as breaches, that said defendant William A. Bevens as such receiver as aforesaid, after the 17th day of January, A. D. 1860, received, in his official capacity, the sum of $19,737 26 belonging to the said plaintiffs, which he has wholly failed to pay over to the United States as he was bound to do by law, and in discharge of the duties of his said office.

And they further aver as breaches, that the said defendant William A. Bevens, on the 17th day of January, A. D. 1860, and at divers days between that day and the 30th day of April, A. D. 1861, received the sum of $19,736 26, as receiver as aforesaid, and in his official capacity for the said United States, which sum remained in his hands on the 30th day of April, A. D. 1861, and for which he then failed to account, as he was bound to do by law and the duties of his office, and which sum he has failed to pay to plaintiffs pursuant to his instructions from the Secretary of the Treasury of said United States, as he was bound to do by law and the duties of his office.

And the said plaintiffs further aver as breaches, that the said defendant William A. Bevens, as such receiver of public moneys
9 as aforesaid, had not truly and faithfully executed and discharged all duties of his said office according to law, previous to the tenth day of February, A. D. 1860, the date of said bond or writing obligatory; and after the seventeenth day of January, A. D. 1860, the date of his said appointment to said office by the President of the United States as aforesaid, in this, to wit: That he had then failed to account, as he was bound to do by law and the duties of his said office to the plaintiffs, and that he has since then wholly failed to account to the plaintiffs, as he was bound to do as aforesaid for the moneys he had received, in his official capacity, on behalf the United States, and that he did fail, on said tenth day of February, A. D. 1860, and has ever since failed to pay over to the United States the moneys received by him on said last-mentioned date, and subsequent to said seventeenth day of January, A. D. 1860, on account of said United States, and that the other said defendants, sureties of the said William A. Bevens on said bond or writing obligatory, together with the said William W. Lewis in his lifetime, and the said William A. Bevens as administrator of the estate of the said William W. Lewis, deceased, since
10 his said decease, have each and every of them wholly failed to pay over the said money so received by the said William A. Bevens as such receiver, which said moneys so received as aforesaid and so due the plaintiffs as aforesaid, amount, as the plaintiffs aver, to the sum of nineteen thousand and seven hundred and thirty-seven dollars and twenty-six cents aforesaid.

And the said plaintiffs further aver, as breaches, that the said defendant, William A. Bevens, as such receiver of public moneys, as aforesaid, has not, since the 10th day of February, A. D. 1860, continued truly and faithfully to execute and discharge all the duties of his said office according to law, from thence until the 30th day of April, A. D. 1861, in this, to wit: That from said 10th day of February, A. D. 1860, to the 30th day of April, A. D. 1861, he had received, on behalf of the United States, the sum of $19,737 26, which sum, at the date last aforesaid, remains in his hands, and for which he failed to account then and there, as he was bound to do by law and the duties of his office; and also in this, to wit, that although between the 10th day of February, A. D. 1860, and the 30th day of April,

A. D. 1861, he had received, in his official capacity, the sum of
11 $19,737 26, belonging to said plaintiffs, which sum, at the date last aforesaid, remained in his hands, and that he and the other said defendants, his sureties on said bond or writing obligatory, together with said William W. Lewis, in his lifetime, and the said William A. Bevens, as administrator of his estate since his death, and each and every of them, has not, nor have they, nor has either or any of them, paid over said sum of money to the said United States, nor has any one for them, or on their behalf, paid over the same, as the said William A. Bevens, as such receiver as aforesaid was bound to do by law and the duties of his office, and under the condition of said bond or writing obligatory, at, to wit, the eastern district of Arkansas aforesaid, although the time for the payment thereof has long since expired; nor have they, the said defendants or either of them, nor did the said William W. Lewis, in his lifetime, nor the said William A. Bevens, as administrator of his estate, since his said decease, paid the said plaintiffs, or any person for them, the said sum of fifty thousand dollars above demanded, or any part thereof, according to the tenor and effect of the said bond or writing obligatory,
12 and the condition thereunder, written or otherwise, at to wit, the district aforesaid; but to pay either or any of said sum of money, or any part thereof, they, the said defendants, and the said William W. Lewis, in his lifetime, and the said William A. Bevens, as administrator of his estate since his said decase, have hitherto wholly neglected and refused, and still do neglect and refuse, at to wit, the eastern district of Arkansas aforesaid.

By means of which said premises an action hath accrued to the said plaintiffs to have and demand from the said defendants the said sum of money above demanded, together with their damages, by reason of the aforesaid unjust detention thereof, to the amount of fifty thousand dollars; and therefore they, the said plaintiffs bring suit, &c.

ORVILLE JENNINGS,
U. S. Attorney.

And thereupon, on the same day, the clerk of said court issued thereon a writ of summons, which is in the words and figures following, to wit:

13 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

The President of the United States to the marshal of the eastern district of Arkansas, greeting:

You are hereby commanded to summon William A. Bevens, David S. Fraley, Robert C. Bates, William M. Lawrence, Joseph H. Egner, and William A. Bevens, as administrator of the estate of William W. Lewis, deceased, and Edwin R. McGuire, citizens of the eastern district of Arkansas, if they be found within your district, to appear before the judge of our District Court of the United States in and for the eastern district of Arkansas, at the United States court-room, in the city of Little Rock, on the first day of our next April term, 1867, to answer the United States of America, plaintiffs, in this suit of a plea

that the said defendants render unto the said plaintiffs the sum of fifty thousand dollars lawful money of the United States of America, debt on bond. Debt, $19,737 26.

To the damage of the plaintiffs fifty thousand dollars, ($50,000 ⁰⁰,) and have you then and there this writ, with the manner of your execution hereof endorsed hereon.

In testimony whereof Hon. Henry C. Caldwell, district judge of the United States for said district, has caused the seal of said District Court to be hereunto affixed this 27th day of September, A. D. 1866, and in the ninetieth year of our independence.

[L. S.] Attest: CHAS. P. REDMOND, *Clerk.*

14 Which writ is endorsed as follows:

No. 51. U. S. District Court, eastern district of Arkansas. United States vs. William A. Bevens. Summons, issued Sept. 27, 1866; returnable April, 1867. Damages, $50,000 ⁰⁰. Returned and filed Feb. 26, '67. Chas. P. Redmond, clerk. Orville Jennings, dist. attorney.

15 And on which writ the marshal makes return as follows:

In obedience to the within writ, I have summoned the within-named William A. Bevens, David S. Fraley, Robert C. Bates, William M. Lawrence, Joseph H. Egner, and William A. Bevens, as administrator of the estate of William W. Lewis, deceased, and also Edwin R. McGuire, by reading the same to them in their presence and hearing, at Batesville, in the eastern district of Arkansas, on this the 13th day of February, A. D. 1867.

ISAAC C. MILLS,
U. S. Marshal for East. Dist. of Ark.
16 By EDWIN BANCROFT, *Dep'y.*

17 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a District Court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the first day of April, anno Domini one thousand eight hundred and sixty-seven, at the United States court-room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, judge, presiding and holding said court, the following proceedings were had, to wit:

And on April 6th, A. D. 1867, it being yet a day of April term, 1867, the following further proceedings were had, to wit:

UNITED STATES
vs.
WILLIAM A. BEVENS *et al.* } Debt.

And now come the said defendants, by Watkins & Rose, their attorneys, and file herein their prayer of oyer of the writing obliga-

tory sued on herein; which prayer of oyer is in the words and
18 figures following, to wit:

In U. S. District Court, eastern dist. of Ark's, April term, A. D. 1867.

UNITED STATES, pl'ff,
vs.
WM. A. BEVENS *et als.*, def'ts. } Debt.

Comes said defendant, Wm. A. Bevens, by attorney, and craves oyer of the said supposed writing obligatory, and the condition thereof in said declaration mentioned, &c.

WATKINS & ROSE,
GARLAND & NASH,
Att'ys.

Endorsed: Filed April 6, 1867. Chas. P. Redmond, clerk.

And on April 9th, A. D. 1867, it being yet a day of the April term, 1867, the following further proceedings were had, to wit:

19 UNITED STATES
vs.
WM. A. BEVENS *et al.*

And now come the said defendants, by Watkins & Rose, their attorneys, and file herein their plea, which plea is in the words and figures following, to wit:

In U. S. District Court for eastern district of Arkansas, at April term, A. D. 1867.

THE UNITED STATES, pl'ff,
vs.
WILLIAM A. BEVENS and OTHERS, def'ts. } Debt on bond.

And the said defendants, other than the said administrator of the said William A. Lewis, deceased, by attorney, come and defend &c., and having oyer of the said bond and of the condition thereof in said declaration mentioned, say actio non, &c.; because they say that the said William A. Bevens, on the said 30th day of April, A. D. 1861, to wit, at the district aforesaid, paid to the said plaintiff the said sum of nineteen thousand seven hundred and thirty-seven
20 dollars and twenty-six cents, (say $19,737 26,) in the several breaches of said condition in said declaration mentioned, and which alleged breaches are one and the same subject-matter and cause of action, according to the form, force and effect of the said condition; and this they are ready to verify.

Wherefore they pray judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against them, &c.

GARLAND & NASH,
WATKINS & ROSE,
For Def'ts.

Endorsed: Filed April 9, 1867. Chas. P. Redmond, clerk.

And on April 11th, A. D. 1867, it being yet a day of the April term, 1867, the following further proceedings were had, to wit:

UNITED STATES
vs.
WILLIAM A. BEVENS *et als.* } Debt.

21 And now, by consent of parties, this cause is continned, with leave to file amended declaration.

22

23 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a District Court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the seventh day of October, anno Domini one thousand eight hundred and sixty-seven, at the United States court-room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, judge, presiding and holding said court, the following proceedings were had, to wit:

And on October 8th, A. D., 1867, it being yet a day of the October term, 1867, the following further proceedings were had, to wit:

UNITED STATES
vs.
WILLIAM A. BEVENS *et al.*

And now this day comes the United States, by John Whytock, esq., U. S. att'y, and files herein her replication to defendants' plea, which replication is in the words and figures following, to wit:

24 In U. S. District Court for eastern district of Arkansas, at Oct. term, A. D. 1867.

THE UNITED STATES
vs.
WILLIAM A. BEVENS *et al.*

And the said plaintiffs, as to the said plea of the said defendant by him above pleaded, say that the said plaintiffs, by reason of anything by the said defendants in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendants; because they say that the said defendants did not pay to the said plaintiffs the said sum of nineteen thousand seven hundred and thirty-seven dollars and twenty-six cents in the said condition mentioned, with lawful interest for the same, in manner and form as the said defendant hath above in the said plea in that behalf alleged; and this the said plaintiffs pray may be inquire of by the country, &c.

JOHN WHYTOCK, *U. S. Att'y.*

Endorsed: Filed October 8, 1867. Chas. P. Redmond, clerk.

25 And on October 8th, A. D. 1867, as follows:

UNITED STATES
vs.
WILLIAM A. BEVENS *et al.*

Now comes the United States, by John Whytock, their attorney, and moves the court for leave to amend the writ and declaration in this case by striking out the defendant, William A. Bevens, as administrator of William W. Lewis, deceased, and dismissing as to said defendant as administrator, which motion was granted; which motion is in the words and figures following, to wit:

Dist. Court United States, east. dist. of Ark., Oct. term, 1867.

UNITED STATES, pl'ffs,
vs.
WILLIAM A. BEVENS *et al.*, def'ts.

Now comes the United States, by John Whytock, their attorney, and moves the court for leave to amend the writ and declara-
26 tion in this case by striking out the defendant, William A. Bevens as administrator of William W. Lewis, deceased, and dismissing as to said defendant as administrator.

JOHN WHYTOCK, *U. S. Att'y.*

Endorsed: Filed Oct. 8, 1867. Chas. P. Redmond, clerk.

And on November 5th, A. D. 1867, it being yet a day of the October term, 1867, the following further proceedings were had, to wit:

UNITED STATES
vs.
WILLIAM A. BEVENS *et al.*

And now come the said defendants, by Garland & Nash, their attorneys, and file herein their three additional pleas, which pleas are in the words and figures following, to wit:

27 In the District Court of the United States in and for said eastern district of Arkansas.

THE UNITED STATES, pl'ff,
vs.
WILLIAM A. BEVENS and OTHERS, def'ts. } Debt.

UNITED STATES OF AMERICA,
Eastern District of Arkansas, sct:

Come said defendants, by attorney, and defend, &c., and for another and additional plea herein, they say, actionen non, &c.; because they say that it is not true, as stated in the declaration herein,

that on the 30th day of April, 1861, there was ascertained to be in the hands of said Bevens, as such receiver, a sum of money to the amount of nineteen thousand seven hundred and thirty-seven dollars and twenty-six cents, ($19,737 26,) belonging to said plaintiff, as being the amount due from said Bevens, as such receiver, on his fractional second quarter ending on the said 30th day of April, 1861; nor was there any other sum ascertained to be due from said Bevens to said plaintiff on the day last aforesaid; and this they pray may be inquired of by the country.

WATKINS & ROSE,
And GARLAND & NASH,
For Def'ts.

28 And for a third and further plea herein said defendants say, actio non, &c.; because they say that said William A. Bevens, as such receiver as aforesaid, did not receive, and had not received on or up to the 30th day of April, A. D. 1861, the sum of nineteen thousand seven hundred and thirty-seven dollars and twenty-six cents, ($19,737 26,) as charged in the declaration of plaintiff; nor did he on said day, nor had he received, any other sum of money for said plaintiff as such receiver; and they pray this may be inquired of by the country.

WATKINS & ROSE,
And GARLAND & NASH,
For Def'ts.

And for a fourth and further plea herein, defendants say, actio non, &c., because they say that heretofore, to wit, on the 6th day of May, A. D. 1861, the people of the State of Arkansas, then being duly and legally assembled in convention at the city of Little Rock, in said State, an ordinance was passed by such convention, commonly
29 known and called an ordinance of secession, whereby the State of Arkansas was withdrawn from the Union of States, then known and called the United States of America, and all political relations between said State and such (herein) were severed and dissolved, and on which day last aforesaid the said Bevens was living and residing in the county of Independence, in said State, where he now lives and resides; and such ordinance so passed as aforesaid was duly and properly signed by the president of such convention and sixty-eight members thereof more than sufficient to make it of force and operative, and so such ordinance became of force and effect and was binding on the citizens, each and all, of the said State of Arkansas; and defendants further aver, that very soon thereafter, to wit, on the 7th day of May, A. D. 1861, said convention passed, duly and in due form, another ordinance, in the words following, viz:

"That all officers of the United States within the limits of this State, (meaning the State of Arkansas,) having moneys of the United States in their hands, are hereby prohibited from paying out

30 the same, and required to hold the same subject to the further order of this convention; and all such officers having personal property of the United States in their possession be required to hold the same subject to the same order, and that said officers be informed by the president of the (this) convention of this action, &c."

And immediately after the passage of such ordinance or resolution, David Walker, then the president of said convention, notified the said Bevens of such action of said convention, and that before he, the said Bevens, had time to account to the United States or to remit the moneys in his hands as such receiver, for any term or portion of a term ending on said 30th day of April, 1861.

And defendants further aver that afterwards said convention by several acts, resolutions or ordinances attached to the State of Arkansas, to what was then known and called the "southern confederacy," with a congress then assembled and a government fully organized at Montgomery, in the State of Alabama, adopted the constitution of such confederacy, and elected delegates to the congress of such confederacy, and assumed for the State of Arkansas
31 her full share of duties and responsibilities with the States of South Carolina, Georgia, Alabama, Louisiana, Florida, Texas, Mississippi and Virginia, in this separate government of the "southern confederacy," and to secure and insure performance of her duties in that behalf, war then actually existing between the United States and such confederacy, the convention aforesaid, as well as the legislatures assembled in said estate from time to time under the action of said convention, made provision for seizing, and did actually seize the moneys in the hands of said Bevens, as receiver as aforesaid, for the purpose of prosecuting and carrying on the war aforesaid on her part, and under said acts and ordinances said Bevens did pay over to the agents and officers of said State all the moneys he had in his possession belonging to said plaintiff, as he was forced and compelled to do, said State then being fully and thoroughly organized as a State of said confederacy, and she and such confederacy having armed troops in her territory to compel him to pay over said moneys, and said acts, resolutions
32 and ordinances were compulsory and left said Bevens no choice in the premises, and the agents and officers of said State of Arkansas, so forming one of the confederate States as aforesaid, demanded of said Bevens all the moneys he had as such receiver, and threatened if he declined to pay the same they would would punish him by imprisonment or otherwise as might be necessary to force the payment from him of all such moneys; and the said Bevens then and there, to wit, on the 1st day of January, A. D. 1862, at, to wit, the said eastern district, in conveyance of such menaces and threats, and in fear and apprehension thereof, did pay over to such agents and officers of said State all the moneys he had in his hands as such receiver, and they aver said moneys were received by the agents and officers of said State and placed in her treasury in aid of the war aforesaid, and at a time when said Bevens could not remit the same to the Treasury Department at Washington city, and under force, compulsion and duress as aforesaid, and they are the moneys referred to [and they

are the moneys referred to] and claimed in plaintiffs declara-
33 tion above, all of which they are ready to verify.
Wherefore, &c.

WATKINS & ROSE,
And GARLAND & NASH,
For Defendants.

Filed Nov. 5, 1867.

CHAS. P. REDMOND, *Clerk.*

And on November 6th, A. D. 1867, it being yet a day of October term, 1867, the following further proceedings were had, to wit:

UNITED STATES
vs.
WILLIAM A. BEVENS *et als.*

And now comes the United States by John Whytock, esq., district attorney, and by consent enters in short upon the record her demurrer to defendants' fourth plea, and also files herein her motion to strike out defendants' second and third additional pleas, which motion is in the words and figures following, to wit:

In Dist. Court U. S. east dist. Ark., October term, 1867.

34 UNITED STATES
vs.
WM. A. BEVENS *et al.*

Comes the United States by John Whytock, their attorney, and the court here to strike out the two first additional pleas, 2 and 3, filed in this action, for the reasons that the same are insufficient, informal and irregular, and not a proper defence to said action.

JOHN WAYTOCK, *U. S. Att'y.*

Filed Nov. 6th, 1867.

CHAS. P. REDMOND, *Clerk.*

35 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that at a District Court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the sixth day of April, anno Domini, one thousand eight hundred and sixty-eight, at the United States Court room in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, judge, presiding and holding said court; the following proceedings were had, to wit, and on April 23d, A. D., 1868, it being yet a day of the April term, 1868, the following further proceedings were had, to wit:

UNITED STATES
vs.
WILLIAM A. BEVENS *et al.* } Debt.

And now comes the United States by John Whytock, esq., district attorney, and files herein her amended declaration, and with-

draws her motion to strike defendant's pleas, and also withdraws her demurrer to defendants' last plea, and by consent enters in short upon the record her replication to defendants' last plea; and come
36 the defendants by Watkins & Rose and Garland & Nash their attorneys, and by consent and agreement of parties it is ordered that this cause be transferred to the Circuit Court of the United States for this district, and that the clerk of this court certify the record and proceedings of this court to said Circuit Court, and that said cause stand for trial in the Circuit Court as though originally commenced there, which amended declaration is in the words and figures following, to wit :

In the District Court of the U. S. A. for the east dist. of Ark's, April term A. D. 1868.

THE UNITED STATES OF AMERICA, pl'ffs,
vs.
WILLIAM A. BEVENS, DANIEL F. FRALEY, ROBERT C. Bates, Wm. M. Lawrence, Joseph H. Egner and Edwin R. McGuire, def'ts.

And the said plaintiff, by way of amendment to her said declaration hereinbefore filed, says that by reason of the premises
37 set forth in her said original declaration and the special breaches therein assigned, she hath sustained damage to a large amount, to wit : to the amount of fifty thousand dollars, by reason of which said breaches, the said writing obligatory became forfeited, and due action hath accrued to the said plaintiff to demand and have of and from the said defendants the said sum of fifty thousand dollars above demanded, the penalty of the said writing obligatory. Yet the said defendants, although often requested so to do, have not as yet paid the said sum of money above demanded or any part thereof, to the said plaintiff, or otherwise according to the said writing obligatory and condition, but to pay the same have hitherto wholly failed and refused, and still do fail and refuse, to the damage of the said plaintiff of five hundred dollars, and therefore she sues.

JOHN WHYTOCK,
U. S. Att'y.

Filed April 23, 1868.

CHARLES P. REDMOND, *Clerk.*

38

39 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that at a Circuit Court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the thirteenth day of April, anno Domini, one thousand eight hundred and sixty-eight, at the United States court room in the city of Little Rock, Arkansas, the Honorable Samuel F.

Miller, Judge of the Supreme Court of the United States, assigned to this circuit, presiding, and Hon. Henry C. Caldwell, district judge, holding said court, the following proceedings were had, to wit:

And on April 24th, A. D. 1868, it being yet a day of the April term, 1868, the following further proceedings were had, to wit:

UNITED STATES
vs.
WILLIAM A. BEVENS *et als.* } Debt.

And now comes the United States by John Whytock, esq., district attorney, and come the defendants by attorneys Watkins and Rose and Garland and Nash, and it is agreed by the parties hereto by their said attorneys that the papers and proceedings in this cause certified from the District Court of this district be filed herein,
40 and that said cause proceed in this court to final judgment, in all things, and with like effect as if it had been originally commenced in this court. And on April 30th, A. D. 1868, it being yet a day of the April term, 1868, the following further proceedings were had, to wit:

UNITED STATES
vs.
WILLIAM A. BEVENS *et al.* } Debt.

And now comes the plaintiff by John Whytock, esq., district attorney and S. F. Clark, esq., and come the defendants by Garland and Nash, and both parties announcing themselves ready for trial, a jury come to wit: Howard Cook, Winston W. Winthrop, Francis W. Jenkins, Paul McWhorter, Otto Winters, William B. Crosson, D. B. Harden, John Collins, James M. Campbell, Cullen J. Cribbs, William Hipple and William L. Fields, being twelve good and lawful men of the district, who were duly tried, empannelled and sworn well and truly to try the issue joined in this cause, and in case they found the issue for plaintiff to inquire of the truth of
41 the breaches assigned and assess the damages sustained thereby, and a true verdict render according to their evidence. And thereupon the jury having heard the evicence and argument of counsel as well on part of the plaintiff as of defendants, and being charged and instructed by the court, retired to consult of their verdict, and afterwards on the same day returned into court the following, to wit: "We the jury find a verdict for the plaintiff and assess the damages at twenty-seven thousand five hundred and ten dollars and thirty cents. Howard Cook, foreman."

It is therefore ordered, considered and adjudged that said plaintiff, the United States, do have and recover of and from said defendants, William A. Bevens, David S. Fraley, Robert C. Bates, William M. Lawrence, Joseph H. Egner and Edwin R. McGuire, the sum of fifty thousand dollars for her debt, and also the further sum of twenty-seven thousand five hundred and ten dollars and thirty

cents, ($27,510 30,) for her damages, found as aforesaid, together with all her costs in and about this suit expended, and have execution for the sum of twenty-seven thousand five hundred and
42 ten dollars and thirty cents, the damages aforesaid, and costs of suit, the payment of which damages and costs shall be a full satisfaction of this action.

And on May 1st, A. D. 1868, it bein yet a day of the April term, 1868, the following further proceedings were had, to wit :

UNITED STATES
vs.
WILLIAM A. BEVENS *et al.*

And now comes said defendants by Watkins and Rose and Garland and Nash, their attorneys, and tender to the court their bill of exceptions to the judgment of the court, overruling their motion in arrest of judgment and for a new trial, which is examined and approved and signed and sealed by the court and ordered to be made a part of the record in this cause, which bill of exceptions is in the words and figures following, to wit :

43 Circuit Court of the United States, eastern district of Arkansas, April term, 1868.

THE UNITED STATES, pl'ffs,
vs.
WM. A. BEVENS and OTHERS, def'ts. } Debt.

Be it remembered that when the above entitled cause came on to be tried, on the 30th day of April, 1868, the same being a day of said April term, the plaintiffs, to prove the issues on their part, offered to read certain papers purporting to be copies from the Treasury Department at Washington city, but to the reading of which defendants at the time objected because the same were improperly certified, and therefore incompetent; but the court overruled such objection, and permitted plaintiffs to read such papers, and the defendants at the time excepted to the ruling of the court in permitting said papers to be read, and time was given them to prepare and tender their bill of exceptions in that behalf, and said papers were read to the jury, and are in the words and figures following:—
44 [This letter refers to the bond sued on of Feb., 1860.]

TREASURY DEPARTMENT, SOLICITOR'S OFFICE,
August 17th, 1866.

SIR: Referring to my letter of the 16th instant, enclosing to you the accounts of William A. Bevens, late receiver of public moneys at Batesville, Arkansas, under his bond of the 28th February, 1856, for suit I transmit like transcripts of the official settlements of his accounts under his bond of the 10th Februrary, 1860. They are embraced in a package of 16 pages, and are numbered 15,681, 15,885,

16,042, 16,236, 16,448 and 16,631, the last of which (page 11) shows a final balance in favor of the United States, April 30th, 1861, of $19,737 26.

Annexed to these transcripts of official settlements, you will find copies of the accounts current rendered by the receiver, the last of which dated March 31st, 1861, admits a balance in favor of the United States of $12,696 39. After this he rendered no account.

45 All differences between his accounts, as rendered, and their several official adjustments, you will find explained and reconciled in "statements of differences" annexed to each of the official settlements. These you will examine carefully, and if, in your judgment anything further is necessary to sustain the claim of the government, let me know, and if possible it shall be furnished.

Please acknowledge the receipt of the papers, institute the necessary proceedings against principal and sureties without delay, and make a full report of all that may be done in the case.

Very respectfully,

H. A. RISLEY,
Act'g Solicitor of the Treasury.

Orville Jennings, Esq'r, U. S. Attorney, Little Rock, Ark.

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT,
August 11, 1866.

46 Pursuant to the act of Congress of 22d February, 1849, I hereby certify that the annexed are true copies of the original bonds of William A. Bevens, as receiver of public moneys at Batesville, Arkansas, now on file in this Department.

In witness whereof I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[L. S.] WM. E. CHANDLER,
Act'g Secretary of the Treasury.

Know all men by these presents that we, William A. Bevens, David S. Fraley, Robert C. Bates, William M. Lawrence, Joseph H. Egner, William W. Lewis, and Edwin R. McGuire are held and firmly bound unto the United States of America in the full and just sum of fifty thousand dollars, money of the United States, to which payment, well and truly to be made, we bind ourselves jointly and severally, our joint and several heirs, executors and administrators firmly by these presents; sealed with our seals, and dated this tenth day of February, in the year one thousand eight hundred and sixty.

47 The condition of the foregoing obligation is such, that whereas the President of the United States hath pursuant to law appointed the said William A. Bevens, receiver of public moneys for the district of lands subject to sale at Batesville, in the State of Arkansas, for the term of four years from the seventeenth day of January, 1860, (or otherwise see section 10, act 3d March, 1853, laws

page 247) by commission bearing date the eighteenth day of January, A. D. 1860.

Now therefore, if the said William A. Bevens, has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge all the duties of the said office according to law, then the above obligation to be void and of none effect, otherwise it shall abide and remain in full force and virtue.

[SEAL.]	WILLIAM A. BEVENS.
[SEAL.]	DAVID S. FRALEY.
[SEAL.]	ROBERT C. BATES.
[SEAL.]	WILLIAM M. LAWRENCE.
[SEAL.]	JOSEPH H. EGNER.
[SEAL.]	WILLIAM W. LEWIS.
[SEAL.]	EDWIN R. McGUIRE.

Signed and sealed in presence of—
BENJAMIN R. SAWTELLE,
JESSE SEARCY.

GENERAL LAND OFFICE,
March 9, 1860.

Approved.

JAS. D. W. WILSON, *Commissioner*.

48 STATE OF ARKANSAS, *County of Independence*:

Before me, Jesse Searcy, a justice of the peace, in and for the county and State aforesaid, personally appeared Edwin R. McGuire, one of the sureties on the official bond of William A. Bevens, receiver of public moneys for the district of lands subject to sale at Batesville, Arkansas, who, being duly sworn, deposes and says that he is worth over and above all just debts and liabilities the sum of fifty thousand dollars.

EDWIN R. McGUIRE.

Sworn to and subscribed before me this tenth day of February, 1860.

JESSE SEARCY, *J. P.*

STATE OF ARKANSAS, *County of Independence, ss*:

I, John A. Price, clerk of the Circuit Court and ex-officio clerk of the County Court within and for the county aforesaid, do hereby certify that Jesse Searcy, esq., who administered the foregoing affidavits, is, and was at the time he certified the same an acting and duly commissioned justice of the peace within and for the
49 county of Independence, duly commissioned and qualified according to law, that his signature thereto is genuine, and that full faith and credence is due his official acts.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at office, in Batesville, this 10th day of February, 1860.

[L. S.] JOHN A. PRICE, *Clerk*.

STATE OF ARKANSAS, *County of Independence*:

Before me, Jesse Searcy, a justice of the peace in and for the county and State aforesaid, personally appeared William W. Lewis, one of the sureties on the official bond of William A. Bevens, receiver of public moneys for the district of lands subject to sale at Batesville, Arkansas, who, being duly sworn, deposes and says that he is worth over and above all just debts and liabilities, the sum of twenty thousand dollars.

WILLIAM W. LEWIS.

Sworn to and subscribed before me this tenth day of February, 1860.

JESSE SEARCY, *J. P.*

STATE OF ARKANSAS, *County of Independence*:

50 Before me, Jesse Searcy, a justice of the peace in and for the county and State aforesaid, personally appeared Joseph H. Egner, one of the sureties on the official bond of William A. Bevens, receiver of public moneys for the district of lands subject to sale at Batesville, Arkansas, who being duly sworn, deposes and says that he is worth over and above all just debts and liabilities, the sum of eight thousand dollars.

JOSEPH H. EGNER.

Sworn to and subscribed before me this tenth day of February, 1860.

JESSE SEARCY, *J. P.*

STATE OF ARKANSAS, *County of Independence*:

Before me, Jesse Searcy, a justice of the peace in and for the county and State aforesaid, personally appeared William M. Lawrence, one of the sureties on the official bond of William A. Bevens, receiver of public moneys for the district of lands subject to sale at Batesville, Arkansas, who being duly sworn, deposes and says that he is worth over and above all just debts and liabilities the sum of four thousand dollars.

WILLIAM M. LAWRENCE.

51 Sworn to and subscribed before me this tenth day of February, 1860.

JESSE SEARCY.

STATE OF ARKANSAS, *County of Independence*:

Before me, Jesse Searcy, a justice of the peace in and for the county and State aforesaid, personally appeared Robert C. Bates, one of the sureties on the official bond of William A. Bevens, receiver of public moneys for the district of lands subject to sale at Batesville, Arkansas, who, being duly sworn, deposes and says that he is

worth over and above all just debts and liabilities the sum of five thousand dollars.

ROBERT C. BATES.

Sworn to and subscribed before me this tenth day of February, 1860.

JESSE SEARCY, *J. P.*

STATE OF ARKANSAS, *County of Independence*:

Before me, Jesse Searcy, a justice of the peace in and for the county and State aforesaid, personally appeared David S. Fraley, one of the sureties on the official bond of William A. Bevens, receiver of public moneys for the district of lands subject to sale at
52 Batesville, in the State of Arkansas, who being duly sworn, deposes and says that he is worth over and above all just debts and liabilities the sum of twenty thousand dollars.

DAVID S. FRALEY.

Sworn to and subscribed before me this tenth day of February, 1860.

JESSE SEARCY, *J. P.*

I, William A. Bevens, having been appointed to the office of receiver of public moneys for the district of lands subject to sale at Batesville, in the State of Arkansas, do solemnly, sincerely and truly swear that I will diligently and faithfully execute the duties of the said office of receiver of public moneys to the best of my endeavors. I further swear that I will support the Constitution of the United States.

WILLIAM A. BEVENS.

Sworn to and subscribed this tenth day of February, 1860, before me. Witness my hand and seal.

[SEAL.] JESSE SEARCY, *J. P.*

53 STATE OF ARKANSAS, *County of Independence, ss*:

I, John Price, clerk of the Circuit Court for the county aforesaid, do hereby certify that Jesse Searcy, who administered the above affidavit, was at the time of doing so duly authorized to administer the same, and that full faith and credit are due to his official attestations.

In testimony whereof I have hereto set my hand and affixed the seal of office at office in Batesville, this tenth day of February, A. D. 1860.

[SEAL.] JOHN A. PRICE, *Clerk.*

I, John M. Harrell, attorney of the United States for the eastern district of Arkansas, do hereby certify that from the evidence afforded, I am fully satisfied of the sufficiency of the annexed and foregoing bond.

JNO. M. HARRELL, *U. S. Att'y.*

Know all men by these presents, that we, William A.
54 Bevens, Edwin Reese McGuire, of Independence county, in the State of Arkansas, L. McGuire, of Independence county, in the State of Arkansas, Joseph H. Egner, of Independence county, in the State of Arkansas, Hulbert F. Fairchild, of Independence county, in the State of Arkansas, William W. Tunstall, of Jackson county, in the State of Arkansas, and William C. Bevens, of Independence county, in the State of Arkansas, are held and firmly bound unto the United States of America, in the full and just sum of fifty thousand dollars, money of the United States, to which payment well and truly to be made we bind ourselves, jointly and severally, our joint and several heirs, executors and administrators firmly by these presents. Sealed with our seals and dated this twenty-eighth day of February, in the year one thousand eight hundred and fifty-six.

The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said William A. Bevens receiver of public moneys for the district of land subject to sale at Batesville, in the State of Arkansas, for
55 the term of four years from the seventeenth day of January, 1856, by commission bearing date the twenty-third day of January, 1856:

Now, therefore, if the said William A. Bevens has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of the said office according to law, then the above obligation to be void and of none effect, otherwise it shall abide and remain in full force and virtue.

[SEAL.]	WILLIAM A. BEVENS.
[SEAL.]	EDWIN R. McGUIRE.
[SEAL.]	WILLIAM L. McGUIRE.
[SEAL.]	JOSEPH H. EGNER.
[SEAL.]	HULBERT F. FAIRCHILD.
[SEAL.]	WILLIAM W. TUNSTALL.
[SEAL.]	WILLIAM C. BEVENS.

Signed, sealed and delivered in presence of—

RALPH R. KELLOGG, Independence Co., Ark's,

URBAN C. FORT, " " , witnesses as to signatures of Wm. A. Bevens, Edwin R. McGuire, William L. McGuire, Joseph H. Egner and Hulbert F. Fairchild.

RUGPA HUDSON,

RICHARD SEARCY, witnesses as to the signatures of William W. Tunstall & William C. Bevens, and both of Jackson County and State of Arkansas.

I, Daniel Ringo, United States judge for the Arkansas district, do hereby certify that the sureties named in the within bond are
56 sufficient and possessed of ample means to pay the full amount of the penal sum therein specified.

In testimony whereof I hereunto set my hand in the eastern district of Arkansas, this 18th day of March, A. D. 1856.

GENERAL LAND OFFICE, *April* 17, 1856.

Approved:

THOMAS A. HENDRICK,
Commissioner.

STATE OF ARKANSAS, *County of Jackson, ss:*

Be it remembered that on this 25th day of February, 1856, personally came before me the undersigned, an acting and duly commissioned , within and for the county aforesaid, William C. Bevens, to me well known and entitled to full credit, and being by me first sworn according to the law, deposeth that he is worth, after payment of his debts, eight thousand dollars, and further saith not.

WILLIAM C. BEVENS.

Sworn to and subscribed before me this day and date.

RICHARD SEARCY, *J. P.*

STATE OF ARKANSAS, *County of Jackson, ss:*

57 I, Richard E. Haden, clerk of the Circuit Court for the county aforesaid, do hereby certify that Richard Searcy, whose genuine signature appears to the two foregoing certificates, is and was at the timd he executed said signatures, an acting justice of the peace within and for the county of Jackson, and as such, duly commissioned and qualified according to law, and that full faith and credit are due his official acts.

In testimony whereof I have hereunto set my name and affixed the seal of my office in Jackson, this 25th day of February, A. D. 1856.

[S. L.] R. E. HADEN, *Clerk.*

STATE OF ARKANSAS, *County of Independence, ss:*

Be it remembered that on this 20th day of February, A. D. 1856, personally came before the undersigned, an acting and duly commissioned justice of the peace within and for the county aforesaid, Edwin R. McGuire, to me well known and entitled to credit, and being by me first duly sworn according to law, deposeth that he is worth, after the payment of all his debts, thirty thousand dollars. And further saith not.

58 EDWIN R. McGUIRE.

Sworn to and subscribed before me this day and date above written.

JESSE SEARCY, *J. P.*

STATE OF ARKANSAS, *County of Independence, ss:*

Be it remembered that on this 21st day of February, A. D. 1856, personally came before the undersigned, an acting and duly commissioned justice of the peace, within and for the county aforesaid, William L. McGuire, to me well known and entitled to credit, and being by me first duly sworn according to law, deposeth that he is worth, after payment of all his debts, fifteen thousand dollars. And further saith not.

WM. L. McGUIRE.

Sworn to and subscribed before me this 21st day of February, A. D. 1856.

JESSE SEARCY, *J. P.*

STATE OF ARKANSAS, *County of Independence, ss:*

59 Be it remembered that on this 21st day of February, A. D. 1856, personally came before the undersigned, an acting and duly commissioned justice of the peace within and for the aforesaid, Joseph H. Egner, to me well known and entitled to credit, and being by me first duly sworn according to law, deposeth that he is worth, after the payment of all his debts, eight thousand dollars. And further said not.

JOSEPH H. EGNER.

Sworn to and subscribed before me this 21 day of February, A.D. 1856.

JESSE SEARCY, *J. P.*

STATE OF ARKANSAS, *County of Independence, ss:*

I, Ralph R. Kellogg, clerk of the Circuit Court, and ex-officio clerk of the County Court in and for the county aforesaid, do hereby certify that Jesse Searcy, esq., whose genuine signature appears to the foregoing several affidavits, is now, and was at the time of signing the same, an acting justice of the peace in and for the county of
60 Independence, duly commissioned and qualified according to law, and that full faith and credit are due all his official acts.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, at Batesville, the 23d day of February, A. D. 1856.

RALPH R. KELLOGG, *Clerk.*

STATE OF ARKANSAS, *County of Independence, ss:*

Be it remembered that on this 22nd day of February, A. D. 1856, personally came before the undersigned an acting and duly commissioned justice of the peace within and for the county aforesaid, Hulbert F. Fairchild, to me well known and entitled to credit, and being by me

first duly sworn according to law, deposeth that he is worth, after the payment of all his debts, eight thousand dollars. And further saith not.

Sworn to and subscribed before me this 22d day of February, A. D. 1856.

61 JESSE SEARCY, *J. P.*

STATE OF ARKANSAS, *County of Jackson, ss* :

Be it remembered that on this 25th day of February, A. D. 1856, personally came before the undersigned, an acting and duly commissioned justice of the peace, within and for the county aforsaid, William W. Tunstall, to me well known and entitled to credit, and being by me first duly sworn according to law, deposeth that he is worth, after payment of all his debts, fifty thousand dollars, and further saith not.

WILLIAM W. TUNSTALL.

Sworn to and subscribed before me this day and date last above written.

RICHARD SEARCY, *J. P.*

I, William A. Bevens, having been appointed to the office of receiver for the district of lands subject to sale at Batesville, in
62 the State of Arkansas, do solemnly, sincerely, and truly, swear that I will dilligently and faithfully execute the duties of the said office of receiver for the district of lands subject to sale at Batesville, Arkansas, to the best of my endeavors. I further swear that I will support the Constitution of the United States.

WILLIAM A. BEVENS.

Sworn to and subscribed this twenty-eighth day of February, 1856, before me. Witness my hand and seal.

[SEAL.] JESSE SEARCY, *J. P.*

STATE OF ARKANSAS, *County of Independence* :

I, Ralph R. Kellogg, clerk of the Circuit Court and ex officio clerk of the County Court in and for the county of Independence aforesaid, do hereby certify that Jesse Searcy, esq., who administered the above affidavit, was at the time of doing so duly authorized to administer the same, and that full faith and credit are due to
63 his official attestations.

In testimony whereof I have here set my hand and affixed the seal of my office, at office in Batesville, this 28th day of February, A. D. 1856.

[SEAL.] RALPH R. KELLOGG, *Clerk.*

TREASURY DEPARTMENT, REGISTER'S OFFICE,
June 20, 1866.

Pursuant to the act of March 3, 1797, entitled "An act to provide more effectually for the settlement of accounts between the United

States and receivers of public moneys," I, S. B. Colby, Register of the Treasury Department, do hereby certify that the annexed copies of the reports of the Commissioner of the General Land Office, numbered 15,681, 15,885, 16,042, 16,236, 16,448, and 16,631, as admitted and certified by the Comptroller upon the accounts of William A. Bevens, late receiver of public moneys at Batesville, Arkansas, under his bond, dated 10 February, 1860, and of the state-
64 ments of differences thereon, are a transcript from the books and proceedings of the Treasury, and that the copies of the accounts current of said receiver are true copies of the originals on file in this office.

S. B. COLBY, *Register.*

Be it remembered that S. B. Colby, esq., who certified the annexed transcript is now, and was at the time of doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof I, Hugh McCulloch, Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this department, at the city of Washington, this 20th day of June, in the year of our Lord 1866.

HUGH McCULLOCH,
Secretary of the Treasury.

65 *Receiver's account.—Report No.* 15,681.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *May* 31, 1860.

SIR: I have examined and adjusted an account between the United States and William A. Bevens, receiver of public moneys at Batesville, Arkansas, for the fractional quarter ending 31st March, 1860, under his bond dated 10th February, 1860, and find that he stands chargeable as follows:

Sales of Public Lands.

To am't rec'd for 155.79 acres of land sold @						
$2 50 per acre					$389 47	
" "	618.42	"	"	1 25	773 02	
" "	280.00	"	"	1 00	280 00	
" "	2,732.60	"	"	75	2,049 48	
" "	863.37	"	"	50	431 68	
" "	6,543.52	"	"	25	1,635 88	
" "	20,223.95	"	"	12½	2,527 99	
	31,417.68 acres				8,087 52	
" "	to perfect payment on a previous entry				18 53	
						8,106 05

Land warrant location fees:

To amount received on account of the register's and receiver's fees for locating land warrants on 400.00 acres	10 00
	8,116 05

66 I also find that he entitled to the following credit:

By warrants in favor of the Treasurer.

By warrant No. 100, dated March 31, 1860, covering am't deposited March 18, '60	3,200 00
" warrant No. 122, dated March 31, 1860, covering payment by draft 2677, T. D. March 31, '60	800 00
	4,000 00
And that the balance due the United States was	4,116 05
	8,116 05

As will appear from the documents and vouchers herewith submitted for your action and decision thereon.

JAS. S. WILSON,
Commissioner.

Hon. Wm. Medill, 1st Comptroller, &c.

TREASURY DEPARTMENT, COMPTROLLER'S OFFCE.

Admitted and certified this 24th day of October, 1860.

WM. HEMPHILL JONES,
Acting Comptroller.

To the Register.

Statement of differences.

67	Adjusted balance due the United States	$4,116 05
	Admitted " " "	4,091 05
	Difference against the receiver	25 00

Thus caused:

Am't charged, for paym't of draft 9177 T. D. in favor of G. A. Dwiggins, susp'd, not cov'd into Tr'y w't	5 00
Am't charged for payment of draft 2027 T. D., favor of J. P. Oliver, susp'd, not cov'd into Tr'y by w't	20 00
Difference as above stated	25 00

JAS. W. WALTON.

Receiver's account.—Report No. 15,885.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *July* 24, 1860.

SIR: I have examined and adjusted an account between the United States and William A. Bevens, receiver of public moneys, Batesville, Arkansas, for the quarter ending June 30, 1860, under his bond dated the 10th February, 1860, and find that he stands chargeable as follows:

To adjusted balance due the United States per report No. 15,681		$4,116 05

To sales of the public lands.

To am't rec'd	for 157.12	acres	at	$2 50 per acre	$392 80	
" "	592.16	"	"	1 25	740 20	
68 "	634.80	"	"	1 00	634 80	
"	1,119.86	"	"	75	839 90	
" "	400.00	"	"	50	200 00	
" "	3,770.98	"	"	25	942 74	
" "	7,430.03	"	"	12½	928 75	
	14,104.95	acres			4,679 19	
" "	to perfect paym'ts for lands heretofore sold				145 00	
						4,824 19

To warrant location fees:

To am't received for register's and receiver's fees for locating 1,639.48 acres of land with military warrants, as per his statements herewith	41 00
Dollars	8,981 24

I also find that he is entitled to the following credits:

For warrants in favor of the Treasurer.

By warrant No. 1, dated May 15, 1660, covering payment by draft 9177, T. D. Apr. 30, '60	$5 00	
By warrant No. 1. dated May 15, 1860, covering payment by draft 2027, T. D. Apr. 30, '60	20 00	
By warrant No. 15, dated May 25, 1860, covering am't deposited, T. D. Apr. 13, '60	2,400 00	2,425 00

For am't refunded under act 3d March, 1855.		
By am't refunded Sam'l M. Gentry Nov. 6, '58, for excess paid on entry No. 7682	$10 00	
By am't refunded Henry Cook June, 1660, for excess paid on entry No. 8432	20 98	30 98
		2,455 98
69 And that the balance due from him to the United States is		6,525 26
Dollars		8,981 24

As appears from the document and vouchers herewith submitted for your decision thereon.

JOS. S. WILSON,
Commissioner.

Hon. Wm. Medill, First Comptroller of the Treasury.

TREASURY DEPARTMENT, COMPTROLLER'S OFFICE.

Admitted and certified this 24th day of October, 1860.

WM. HEMPHILL JONES,
Acting Comptroller.

To the Register.

Statement of differences.

Adjusted balance due the United States		6,525 26
Admitted " "		2,065 01
Difference against him, dollars		3,560 25
Thus caused:		
Am't of previous difference against him		25 00
" charged for deposit of May 22, 1860, not covered by tr'y warrant, susp'd		2,100 14
Am't charged for pay'm't by draft No. 3,399, June, 1860, by tr'y warrant susp'd		1,470 00
70 Am't of short credit for purchase money for lands sold		11
		3,595 25
From which deduct as follows:		
Am't paid by draft No. 9,177, susp'd last quarter and now allowed	5 00	
Am't paid by draft No. 2,027, susp'd last quarter and now allowed	20 00	
Am't refunded Sam'l M. Gentry on entering 7,682, not charged by receiver	10 00	35 00
Difference as above stated, dollars		3,560 25

Receiver's account.—Report No. 16,042.

DEPARTMENT OF THE INTERIOR,
General Land Office, October 13, 1860.

SIR: I have examined and adjusted an account between the United States and William A. Bevens, receiver of public moneys at Batesville, Arkansas, for the quarter ending 30th September, 1860, under his bond dated the 10th February, 1860, and find that he stands chargeable as follows:

To adjusted balance due the United States June 30, 1860, per report No. 15,885, dated July 24, 1860								6,525 26
To sale of public land:								
71								
To am't rec'd for 279.50 acres of land sold at								
2 50 per acre							698.82	
"	"	1,047.60	"	"	1 25		1,309 51	
"	"	566.38	"	"	1 00		566 38	
"	"	2,151.61	"	"	75		1,613 71	
"	"	3,537.99	"	"	50		1,768 99	
"	"	5,170.65	"	"	25		1,292 66	
"	"	9,027.16	"	"	12½		1,128 65	
		21,782.93 acres.						8,378 72
Land warrant location fees:								
To am't received on account of his and the register's fees for locating military bounty land warrants on 2,070.99 acres during second quarter								53 00
								$1,4956 98

I also find that he is entitled to the following credits:

By am't of Va. mil. bounty l'd scrip, Nos. 11,361, 11,362, 11,364 and 11,365, herewith		400 00
By warrants in favor of the treasurer:		
By war't No. 48, dated June 23, 1860, cov'g this am't deposited May 22, '60	$2,100 14	
By war't No. 85, dated June 30, 1860, cov'g pay'nt by draft 3,399, T. D., June 30, '60	1,470 00	
By war't No. 12, dated Aug. 13, 1860, cov'g am't deposited July 6, '60	2,600 00	
By war't No. 39, dated Sept. 15, 1860, cov'g pay'nt by draft 2,710, T. D., Jan'y 31, '60	40 00	
		6,210 14
		6,610 14
And that the balance due the United States was		8,346 84
72		14,956 98

As will appear from the documents and vouchers herewith submitted.

JOS. S. WILSON,
Commissioner.

Hon. Wm. Medill, First Comptroller, &c.

Statement of differences.

Adjusted balance due the United States		8,346 84
Admitted " "		2,809 51
Difference against him		5,537 33
Thus caused;		
Previous difference against him		3,560 25
Am't charged for deposit of 13th Sept., '60, susp'd, not cov'd by warrant to his credit		4,400 00
Am't charged for paym't of Tr'y draft No. 3,573, susp'd, not cov'd by warrant to his credit		1,147 14
Am't rec'd in scrip for S.E. ¼ sec. 27, T. 9, N. R., b. w., not credited by him		400 00
Am't short credit for lands sold		09
Deduct		9,507 48
Am't p'd by draft No. 3,399, susp'd last quarter and now allowed	$1,470 00	
Am't dep'd May 26, '60, susp'd last quarter and now allowed	2,100 14	
Am't of scrip surrendered not charg'd by him	400 00	
Am't credited for short credit in July	01	
		3,970 13
73 Difference as above stated		5,537 33

JOS. W. WALTON, *Acc't.*

TREASURY DEPARTMENT, COMPTROLLER'S OFFICE.
Admitted and certified this 6th day of November, 1860.
W. MEDILL, *Comptroller.*

To the Register.

Receiver's account.—Report No. 16,236.

DEPARTMENT OF THE INTERIOR,
General Land Office, January 29, 1861.

SIR: I have examined and adjusted an account between the United States and William A. Bevens, receiver of public moneys at Batesville, Arkansas, for the quarter ending 31st December, 1866, under

his bond dated the 10th February, 1860, and find that he stands chargeable as follows:

To adjusted balance due the United States 30th September, 1860, per report No. 16,042, dated October 13, 1860	$8,346 84

74 To sales of public lands:

To am't rec'd for 439.37 acres, sold at $2 50 per acre			1,098 42	
"	" 1,504.37	" 1 25	1,880 46	
"	" 609.28	" 1 00	609 23	
"	" 5,675.97	" 75	4,256 98	
"	" 2,683.63	" 50	1,341 81	
"	" 8,683.98	" 25	2,145 99	
"	" 26,418.52	" 12½	3,302 32	
	45,915.12 acres.		14,635 26	
"	as additional payment on entries Nos. 9,199 and 9777		100.00	
				14,733.26
To military bounty land location fees: To amount received on account of the registers' and receivers' fees for locating land warrants on 5.20 acres during said qr				13 00
				23,095.00

I also find that he is entitled to the following credits:

By warrants in favor of the treasurer.

By warrant No. 83, dated Sept. 29, '60, cov'g paym't by draft 1.066, T. I., Sept. 29, '60	1,147 14	
By warrant No. 112, dated Sept. 29, '60; am't deposited at Little Rock, " 13, "	4,400 00	
By warrant No. 21, dated Nov. 22, '60; am't deposited at Little Rock, Oct. 27, '60	2809 50	
		8,356 65
By over debit for am't received as excess on location of bounty land warrants No. 93,216, act 1855, on 119.53 acres in 3d qr. 1860, per rec'pt No. 18,915		148 82
And that the balance due the United States amounts to		14,589 63
		23,095 10

75

As will appear from the documents and vouchers herewith submitted.

JOS. S. WILSON,
Commissioner.

Hon. Wm. Medill, 1st Comptroller, &c.

TREASURY DEPARTMENT, COMPTROLLER'S OFFICE.

Admitted and certified this 25th day of March, 1861.

W. MEDILL, *Comptroller.*

To the Register.

Statement of differences.

Adjusted balance due the United States		$14,589 63
Admitted " "		5,469 00
Difference against receiver		9,120 63
Thus caused:		
Previous difference against him		5,537 32
Am't charged as deposited which has not yet been covered into the Treasury by warrant susp'd		9,070 36
Am't received as additional payment on entry No. 9,199, not credited by him		60 00
Short credit for value of lands sold during the quarter		08
		14,667 77
From which deduct:		
76 Amount charged last qr. for deposit of September 13, '60, then susp'd and now allowed	4,400 00	
Am't charged last qr. for pay't of draft No. 3,573, then susp'd and now allowed	1,147 14	
		5,547 14
Difference as above stated		9,120 63

JAS. W. WALTON, *Cl'k.*

Receiver's account.—Report No. 16,448.

DEPARTMENT OF THE INTERIOR,
General Land Office, April 30th, 1861.

SIR: I have examined and adjusted an account between the United States and William A. Bevens, receiver of public moneys at Batesville, Arkansas, for the quarter ending 21st March, 1861, under his bond dated the 10th February, 1860, and find that he stands chargeable as follows:

To adjusted balance due the United States 31st December, 1860, per report No. 16,236, dated January 29th, 1861	$14,589 63

Sales of public lands.

To amount received during the month of May, 1860, for the lands embraced in the following numbered entries, viz: 18,544½, 18,545½, 18,546½, 18,547½, 18,548½,
77 18,549½, 18,550½, 18,551½, 18,552½, 18,553½, 18,555½, 18,556½, 18,557½ not heretofore accounted for.

40.00	acres sold at	75 per acre	30,00
40.00	"	50	20,00
194.77	"	25	48,68
932.27	"	12½	116,59
1,207,04	acres		215,27

To am't rec'd on entry 19,260½—81.34 acres sold at 12½ per acre not heretofore acct'd for 10,15

To am't rec'd for the following number of tracts of land sold during the quarter ending March 31, 1861:

275.79	acres at	2 50	per acre	689 47
838.00	"	1 25	"	1,047 49
281.18	"	1 00	"	218 18
3,722.09	"	75	"	2,791 58
1,621.50	"	50	"	1,210 75
4,265.38	"	25	"	1,066 34
12,865.29	"	12½	"	1,608 16
24,869.23	acres			8,794 97

To am't rec'd as additional payment on entry No. 13,437 ..... 40 00

9,060 39

Military bounty land warrant location fees.

To amount received on account of the register's and receiver's fees for locating landwarrants on 800 acres of land during the 1st quarter 1861 ..... 20 00

Am't carried forward to the receiver's debt 23,670 02

78 Am't brought forward to receive's credit 23,670 02

I also find he is entitled to the following credits:

Warrants in favor of the treasurer.

By warrant No. 100 dated Dec. 31, 1869, covering am't deposited at Little Rock, Arkansas, November 17, 1860 ..... 3,002 36

By warrant No. 24, dated Feb'y 19, 1861, cov-'ing payments by drafts No. 4052, T. D. Jan'y 31, 1861	5		
"	4983 "	1000	1,005 00
			4,007 36
And that the balance due the United States on the 31st March, 1861, amounted to			19,662 66
			$23,670 02

As will appear from the documents and vouchers herewith submitted for your action and decision thereon.

J. M. EDMONDS,
Commissioner.

Hon. Wm. Medill, 1st Comptroller of the Treasury.

Statement of differences.

Adjusted balance due the United States	19,662 66
Admitted " "	12,676 39
Difference against receiver	6,966 27

Thus caused:

Difference against him last quarter	9,120 63
Am't received for 13 entries made in May last not accounted for by him	215 27
Am't charged this qr. for pay,t by dr'fts susp'd not yet cov'd into the Tr'y by warrant	681 43
Am't short credit for purchase-money rec'd being error in adding 4th column of qr. ac	50 50
Am't short cr. for value of lands sold	65
Am't received on entry No. 19,260½ not heretofore debited him	10 15
	10,078 63

From which deduct:

Am't credited for add'l pay't on entry 8,199 debited him last qr	60 00	
Am't cr. as rec'd on entry 19770 whichwas refunded & the entry cancelled before returns were made out	50 00	
Am't war't 100 cov'g am't deposited Nov. 17, '60, susp'd last qr. and now allowed	3,002 36	
		3,112 36
Difference as above stated		6,966 27

JAS. W. WALTON, *Acc't.*

TREASURY DEPARTMENT,
Comptroller's Office.

Admitted and certified this 4th day of September, 1860.
E. W. WHITTLESEY,
Comptroller.

To the Register.

80 *Receiver's Account.—Report No.* 16,631.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
September 30th, 1861.

SIR: I have examined and adjusted an account between the United States and William A. Bevens, receiver of public moneys, Batesville, Arkansas, for the fractional 2d quarter ending April 30, 1861, under his bond dated this 10th February, 1860, and find that he stands chargeable as follows:

To adjusted balance due the United States per report No. 16,448		19,662 66
To sales of public lands:		
To am't of purchase-money rec'd for lands sold during the month of April, 1861, as per monthly returns on file in the Gen'l Land Office, viz:		
To purchase-money rec'd for—		
" 120.00 acres at 1,00 per acre	120 00	
" 199.90 " 75 "	149 39	
" 121.57 " 50 "	60 78	
" 720.00 " 25 "	180 00	
" 1,962.59 " 12½ "	245 32	
3124,06 acres		756 03
Dollars		20,418 69

I alo find that he is entitled to the following credit:

81 *By warrant in favor of the treasurer.*

By war't No. 89, dated Mar. 30, 1861, cov'g pay't by dr'ft No. 5508, T. D. dated Mar. 30, '61.	54 00	
" 5513 "	42 00	
" 5510 "	573 43	
" 5612 "	12 00	
		681 43
And that the balance due the United States amounts to		19,737 26
		20,418 69

As appears from the document and vouchers herewith submitted for your action and decision thereon.

J. M. EDMONDS,
Commissioner

Hon. E. Whittlesey, First Comptroller of the Treasury.

TREASURY DEPARTMENT,
Comptroller Office.

Admitted & certified this 4th day of October, 1861.

E. WHITTLESEY,
Comptroller.

To the Register.

Statement of differences.

Adjusted balance due the United States 19,737 26
The receiver submits no account.

82
83 *The United States in account current with William A. Bevens, receiver of public moneys at Batesville, Arkansas, for the fractional quarter commencing on the 10th February, and ending on the 31st of March, 1860, under bond dated 10th Feb'y, 1860.*

1860.	DR.			
M'ch 31.	To amount of money accounted for in the quarter ending this day, viz: deposit in the U. S. depositroy at Little Rock	3,200		
	Treasury drafts paid	825		
			4,025	00
	Balance due the United States		4,091	05
			$8,116	05

1860.	CR.			
March 31.	Amount of purchase-money received for 31,417.68 acres sold during the present quarter	8,106	05	
	Amount of fees on 400.30 acres located Oct., 1855	10	00	
			8,116	05
			$8,116	05

Receiver's office at Batesville, Arkansa, March 31st, 1860.

W. A. BEVENS, *Receiver.*

84 *The United States in account current with William A. Bevens receiver of public moneys at Batesville, Arkansas, for the 2d quarter commencing on the 1st of April, and ending on the 30th June, 1860, under bond dated 10 Feb'y, 1860.*

1860.	Dr.		
June 30.	To amount of moneys accounted for in the quarter ending this day, viz: Depository in the U. S. depository at Little Rock	4,500 14	
	Treasury drafts paid	1,470 00	
	Purchase money refunded, entry No. 8,432	20 98	
			5,991 12
	Balance due the United States.		2,965 01
	Dollars		8,956 13
1860.	Cr.		
June 1.	By balance due the United States as per account current for the quarter ending on the 31st day of March, 1860	4,091 05	
" 30.	Amount of purchase money received for $14,104\frac{95}{100}$ acres sold during the present quarter	4,679 08	
	Amount of fees on 1,690 $\frac{31}{100}$ acres located act of 1855	41 00	
			8,811 13
	Additional payments		145 00
	Dollars		8,956 13

Receiver's office at Batesville, Arkansas, June 30, 1860.

W. A. BEVENS, *Receiver.*

85 *The United States in account current with William A. Bevens, receiver of public moneys, Batesville, Arkansas, for the 3d quarter commencing on the 1st of July, and ending on the 30th of September, 1860, under bond dated 30th February, 1860.*

1860.	Dr.		
Sept. 30.	To amount of moneys accounted for in the quarter ending this day, viz: Deposit in the United States depository at Little Rock	7,000 00	
	Treasury drafts paid	1,187 14	
			8,187 14
	Balance due the United States.		2,809 51
	Dollars		10,996 65

1860.	Cr.		
Sept. 30.	By balance due the United States as per account current for the quarter ending on the 31st day of June, 1860..	2,965 01	
	Amount of purchase money received for 21,622 $\frac{48}{100}$ acres sold during the present quarter	7,978 64	
	Am't of fees on 160 acres, located act 1852.....	4 00	
	Am't of fees on 1,711 $\frac{26}{}$ acres located act 1835	49 00	
			10,996 65
			$10,996 65

Receiver's office at Batesville, Arkansas, September 30, 1860.
W. A. BEVENS, *Receiver.*

86 *The United States in account current with William A. Bevens, receiver of public moneys at Batesville, Arkansas, for the 4th quarter commencing on the 1st of October, and ending on the 31st of December,* 1860, *under bond dated 16th February,* 1860.

1860.	Dr.		
Dec. 31.	To amount of moneys accounted for in the quarter ending this day, namely, deposit in the U. S. depository at Little Rock, Ark's.....	11,879 87	
	Error in account for Oct. past.	148 82	
			12,028 69
	Balance due the United States		5,469
	Dollars.....		17,497 69

1860.	Cr.		
Dec. 31.	By balance due the United States as per account current for the quarter ending on the 30th day of September, 1860.	2,809 51	
	Amount of purchase money received for 45,915 $\frac{12}{100}$ acres sold during the present quarter.....	14,675 18	

Am't of fees on 80 acres, located act 1850	2 00	
Am't of fees on 440 acres, located act 1855	11 00	
		17,497 69
Dollars.....		17,497 69

Receiver's office at Batesville, Arkansas, December 31, 1860.
W. A. BEVENS, *Receiver.*

87 *The United States, in account with William A. Bevens, receiver of public moneys at Batesville, Arkansas, for the 1st quarter commencing on the 1st of January and ending on the 31st of March, 1861, under bond, dated 10th February 1861.*

1861. DR.

M'ch 31.	To amount of moneys accounted for in the quarter ending this day, deposited in U. S. depository at Little Rock.		
	Treasury drafts paid	$1,686 43	
	Balance to be credited to United States	12,696 39	
			14,382 82
			$14,382 82

1861. CR.

Jan'y 1.	By balance due United States as per account current for the quarter ending 31st December, 1860	$54 68	
	Amount of purchase money rec'd for 24,909.23 acres, sold during present quarter	8,833 82	
	Am't of fees on 200 acres located act 1850	5 00	
	Amount of fees on 600 acres located act 1855	15 00	
	Am't of additional payments upon entry, No. 9,199	60 00	
			14,382 82
			$14,382 82

Receiver's office, Batesville, Arkansas, March 31, 1861.
W. A. BEVENS, *Receiver.*

88 And the plaintiffs closed their case and offered no further testimony.

And thereupon defendants offered to prove by William R. Miller and others, the facts each and all of them avered in their fourth plea in said cause, but the plaintiffs objected to the introduction of such testimony, upon the ground that if all such facts were proved they would not release defendants or protect them, and the court sustained such objection, and held the issue on such fourth plea to be immaterial, and refused to permit such testimony to be introduced, and to the opinion and ruling of the court in sustaining such objection and refusing to permit the testimony so offered by defendants to be introduced, and holding such issue under the fourth plea to be immaterial, the defendants at the time excepted, and time was given them to prepare and tender their bill of exceptions in that behalf.

And no further testimony was offered, and the above is all the testimony in the cause.

And thereupon the court instructed the jury to find for plaintiffs the amount claimed in and by said papers read in evidence by
89 plaintiffs, viz: $19,737 26, with interest thereon from the 4th of October, A. D. 1861, and to this instruction of the court the defendants excepted at the time, and time was given them to prepare and tender their bill of exceptions in that behalf.

And defendants now present this, their bill of exceptions in said cause, and ask the same to be signed, sealed and made of record in said cause, which is accordingly done this April 30th, 1868.

[SEAL.] SAM. F. MILLER.
[SEAL.] HENRY C. CALDWELL.

Filed May 1, 1868.

CHAS. P. REDMOND, *Clerk.*

90 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

I, Charles P. Redmond, clerk of the Circuit Court of the United States for the eastern district of Arkansas in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct and compared copies of their originals on file and remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court, this twenty-sixth day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States of America the ninety-third.

Attest:

[SEAL.] CHAS. P. REDMOND, *Clerk.*

Clerk's fee, $21 50.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

WILLIAM A. BEVANS, *et. al.*, *Plaintiffs in Error.*
vs.
THE UNITED STATES.
No. 126.

In error to the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF OF THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

WILLIAM A. BEVANS, *et. al.*, *Plaintiffs in Error.*
vs.
THE UNITED STATES.
No. 126.

In error to the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF OF THE UNITED STATES.

STATEMENT.

This is a suit brought in the district court of the United States for the eastern district of Arkansas, against Bevans and his sureties on the official bond of Bevans as receiver of public money for the district of lands subject to sale at Batesville, in the State of Arkansas. In the declaration and writ, Wm. A. Bevans, as administrator of Wm. W. Lewis, deceased, one of the obligors in his lifetime, was joined with the other obligors; but the writ and declaration were amended by leave of court by striking out the name of Bevans as administrator, &c. (Printed transcript, p. 9.)

The bond had the condition, that if the said Bevans

shall have truly and faithfully executed and discharged, and shall continue truly and faithfully to discharge, all the duties of the said office according to law, then the above obligation to be void and of none effect, otherwise it shall abide and be in full force and virtue. (Printed transcript, pp. 16 and 17.) The breach alleged was that Bevans, on the 30th day of April, 1861, had in his hands the sum of $19,737 26, public moneys of the United States, received by him in his official capacity from the sales of public lands during the term of office, to secure the faithful discharge of whose duties the bond was given, and that neither he nor his sureties had paid over the sum to the United States according to law, as he was bound to do. This breach was assigned in six different forms, by reason of which (declaration, printed transcript, p. 5, and amended declaration printed transcript, p. 13) the United States have sustained damages to the amount of $50,000, and the said writing obligatory has become forfeited, and an action has accrued, &c.

The defendants, after craving *oyer* of the writing obligatory and its condition, plead, first, that they had paid the plaintiffs the sum of $19,737 26, (p. t., p. 7;) to which the plaintiffs replied that the defendants have not paid said sum. The defendants then file three additional pleas: first, that it was not ascertained that said sum, or any other sum, was due from said Bevans to the said plaintiffs on the 30th day of April, 1861. This is the second plea in the case. The third plea is,

that said Bevans had not received, on or up to the 30th day of April, 1861, such sum as charged in the declaration, or any other sum as receiver, as charged by the plaintiffs. The fourth plea says that the plaintiffs ought not to maintain their action, because, on the 6th day of May, 1861, the people of the State of Arkansas passed an ordnance of secession, &c., and also passed an ordnance that all officers of the United States, within the limits of Arkansas, having moneys of the United States in their hands, are prohibited from paying out the same, and are required to hold them, subject to the further order of the convention; and that Bevans was a citizen of the State of Arkansas, living in it, and was notified by the president of the convention of such ordinance or resolution before he, Bevans, had time to account with the United States, or remit the moneys in his hands for any term, or portion of the term, ending on the 30th day of April, 1861; that the State of Arkansas joined the Southern Confederacy, and that war existing between the United States and said confederacy, the convention aforesaid, and the legislature of said State, from time to time, under the action of said convention, seized the moneys in the hands of said Bevans as receiver as aforesaid, for the purpose of prosecuting and carrying on the war aforesaid, and Bevans, under the acts and ordinances of such convention and legislatures, did pay over to the agents and officers of said State all such moneys, and was forced and compelled to do so; and that the agents and officers of the State of Arkansas

threatened, if he declined to pay the same, to punish him by imprisonment; and said State had then armed troops of herself and of the confederacy in her territory; and that said acts and ordinances were compulsory, and left said Bevans no choice in the premises; and that thereafter, on the first of January, 1862, in consequence of such menaces and threats, he did pay over to the agents and officers of said State all the moneys in his hands as receiver, which were used by said officers in aid of the war at a time when said Bevans could not remit the same to the Treasury Department at Washington. To which fourth plea the plaintiffs demur, (p. t., p. 12,) which demurrer is withdrawn, as well as the motion of the plaintiffs to strike out the second and third pleas of the defendant; and by consent the plaintiffs enter in short upon the record their replication to said fourth plea; and by consent and agreement of the parties, it is ordered that this cause be transferred to the circuit court for this district, and the clerk of the district court is ordered to certify, and does certify, the record and proceedings of the said district court to said circuit court; and it is ordered that the cause stand for trial in the circuit court as though originally commenced there. (P. t., p. 13.) And it is agreed by the parties that the record and proceedings in this cause certified from the district court be filed in the circuit court, and that the cause proceed in the circuit court to final judgment in all things with like effect as if it had been commenced in the circuit court. (P. t., p. 14.)

In the circuit court the cause is committed to a jury, who find the issues for the plaintiff in the following words, to wit: "We the jury find a verdict for the plaintiff, and assess the damages at $27,500 30, Henry Cook, foreman." On which verdict judgment for $50,000 is entered, execution to issue for the damages found by the jury. (P. t., pp. 14 and 15.) This amount is the amount sued for, with interest. On the same day, to wit, April 30,1868, the exceptions are signed and sealed, and on the following day, May 1, 1868, are filed in the circuit court, and thereafter, on the same day, a writ of error is sued out.

The bill of exceptions (p. t., p. 39) contains, first, an exception to the ruling of the court permitting certain papers purporting to be copies from the Treasury Department, Washington city, to be read to the jury, to which the defendants objected, because, as they said, the papers were improperly certified. In what respects it is claimed they were improperly certified is not stated.

When the plaintiffs had closed their case, the defendants offered to prove the facts alleged in their fourth plea, to which the plaintiffs objected, on the ground that such facts if proved would not release the defendants; and the court sustained the objection, and held the issue on such fourth plea to be immaterial, and refused to permit such testimony to be introduced; to which the defendants objected. No further testimony was offered, and the above is all the testimony in the case.

Thereupon the court instructed the jury to find for plaintiffs the amount claimed in and by said papers read in evidence by the plaintiffs, namely, $19,737 26, with interest thereon from the 4th of October, A. D. 1861, and to this instruction of the court the defendants excepted at the time, and time was given, &c.

The questions for this court, then, are three—First. Were the papers read in evidence competent evidence? Second. Was the fourth plea a good bar? Third. Did the court err in instructing the jury to find for the plaintiffs the amount claimed and proved?

ARGUMENT.

1. In the brief filed by Mr. Garland, of counsel for plaintiffs, the question of the competency of the evidence is not taken, and I suppose is abandoned. The Treasury transcript, read in evidence, seems to have been prepared in accordance with the second section of the act of March 3, 1797, (1 Stat., 512,) and it is well established that such a transcript is evidence against a public officer and his sureties that he has received officially the moneys therein charged to him.

Worden *vs.* The United States, 9 Wheat., 651; Bruce *et al. vs.* The United States, 17 How., 437; The United States *vs.* Hodge, jr., *et al.*, 14 How., 438; Smith *vs.* The United States, 5 Peters, 292.

2. As the rejection of testimony to prove an irrelevant fact is not error, (Turner *vs.* Fendall, 1 Cranch, 118,) so, upon the same principle, it is not error to reject

evidence offered in support of an immaterial issue. Such was the character of the issue raised by the fourth plea of the defendant, and accordingly the court below did not err in refusing to permit the testimony offered in support thereof to be introduced. That the facts alleged in the plea constituted no defense, and that it was consequently defective in substance, see United States *vs.* Keehler, S. C. U. S., Dec. Term, 1869; United States *vs.* Dashiel, 4 Wall., 185; United States *vs.* Morgan, 11 How., 162; United States *vs.* Prescott, 3 How., 588.

3. The evidence of the plaintiffs was entirely uncontradicted, and if competent, established their case. It seems that no attempt was made to contradict it, and that, as the court ruled, there was no evidence whatever for the defense. The instruction of the court was, therefore, correct. Under the circumstances in which it was given, it is nothing more than an instruction that the evidence for the plaintiffs is uncontradicted, that there is no evidence for the defendants, and if the jury believe the evidence, their verdict must be for the plaintiffs for the amount named. When a clear case is made out by the plaintiff, and no defense is shown by the defendant, an instruction such as that complained of is, it seems, in conformity with the practice of the courts of the United States. Dwyer *vs.* Dunbar, 5 Wall., 325.

The fourth plea of the defendants was a plea in confession and avoidance. It admitted substantially the possession of the moneys by the defendant (Bevans) and his duty to pay them to the United States, and he justi-

fied his refusal on the ground that he was compelled by force to pay them to the agents and officers of the State of Arkansas. The court held this no justification, and therefore in the plea there was a confession or concession that he owed the United States the sum declared on, for which the court must have instructed the jury to render a verdict. Regularly, the plaintiffs should have demurred to the fourth plea, as they did, but subsequently withdrew it. On this demurrer, judgment must have been rendered for the plaintiffs and damages assessed by the court, or, if either party requested it, by the jury.

E. R. HOAR,
Attorney General.
W. A. FIELD,
Assist. Attorney General.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

JOHN G. HALLIBURTON *et al.*
vs.
THE UNITED STATES, } No. 19.

and

WILLIAM A. BEVANS *et al.*
vs.
THE UNITED STATES. } No. 20.

Additional Brief for the United States.

The single question upon which counsel wish to make any additional brief in these cases is, whether the facts stated in the pleas of the plaintiffs in error constitute a defence to the action.

The rule of law applicable to them, it is submitted, is perfectly well settled. "It is now a common learning," says Mr. Justice Metcalf, "that when a person makes an absolute and unqualified contract to do some particular act, the impossibility of performance occasioned by inevitable accident, or some unforeseen occurrence, will not release him."

Metcalf on Contracts, 213.

This principle of the law would seem never to have been questioned, but has been adopted and applied in innumerable cases.

Dermott *vs.* Jones, 2 Wallace, 1.
The Harriman, 9 Wallace, 161, 172.
Paradine *vs.* Jane, Aleyn, 26.
Bullock *vs.* Dommitt, 6 T. R., 650.
Brecknock Company *vs.* Pritchard, Ib. 750.
Pollard *vs.* Shaaffer, 1 Dall., 210.
Hallett *vs.* Wylie, 3 Johns., 44.
Harmony *vs.* Bingham, 2 Kernan, 99.
Adams *vs.* Nichols, 19 Pick., 275.
School Trustees *vs.* Bennett, 3 Dutcher, 513.
Com. Dig. Condition, D, 1.
3 Kent's Com., (6th ed.,) 465, *et seq.*

This principle, although most frequently applied in cases of covenants to pay rent and to keep demised premises in repair, is equally applicable to other contracts, and it has been repeatedly applied by this and other courts to the conditions in the bonds of public officers, where the obligors have been prevented from paying over the money by unforeseen occurrences, and without neglect on their part.

United States *vs.* Prescott, 3 How., 578.
United States *vs.* Morgan, 11 How., 162.
United States *vs.* Dashiel, 4 Wallace, 185.
United States *vs.* Keehler, 9 Wallace, 85–88.
Commonwealth *vs.* Comley, 3 Barr, 372.
State *vs.* Harper, 6 Ohio St., 607.

The plaintiffs in error made these bonds voluntarily, and, after the decisions of this court, it must be assumed that they did so with full knowledge of the extent of the liability which they were incurring. It is, therefore, a case where an individual has voluntarily made an express contract to do a certain thing without any exception, and comes entirely within this rule of law and of the adjudicated cases under it.

In the case of bonds given by receivers of public money, public policy furnishes a very strong argument in favor of this principle. The same reasons which have compelled the courts to extend the implied contract of common carriers to all future occurrences, however unforeseen, and however much beyond the power of the carrier to prevent, except the acts of God and the King's enemies, apply with equal force to these contracts; and, even without so broad a principle of law as the above cases have established, it might be well argued that it would be necessary to extend an equally stringent rule to contracts of this kind. But it is unnecessary to discuss this question, as the settled rules of law applicable to all contracts render the pleas of the plaintiffs in error no defence to the demands of the Government.

There is no distinction in principle between the case of a theft, and consequent loss of money without any neglect or fault on the part of the receiver, and the case of a forcible taking of the money by open robbery by a superior force. The hardship in the one case is just

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as great as in the other, and if there are any ameliorating circumstances which should induce the Government not to insist upon its strict rights, they must appeal to other departments of it, rather than to the judicial.

A. T. AKERMAN,
Attorney General.

C. H. HILL,
Assistant Attorney General.